

Filed for intro on 02/01/95  
Senate Bill \_\_\_\_\_  
By \_\_\_\_\_

House Bill No.HB0230  
By Odom

AN ACT to amend Tennessee Code Annotated, Title 36; Title 39 and Title 40, to enact the "Domestic and Family Violence Prevention Act of 1995".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-3-601, is amended by deleting subpart (1) and substituting instead the following:

(1) "Abuse" means inflicting, attempting to inflict or threatening to inflict physical injury on an adult by other than accidental means, physical restraint, or malicious damage to the personal property of the abused party;

SECTION 2. Tennessee Code Annotated, Section 36-3-601, is further amended by deleting subsection (4) and substituting instead the following:

(4) "Family or household member" means:

- (A) Spouses;
- (B) Persons living as spouses;
- (C) Persons related by blood or marriage;
- (D) A respondent who is the parent of the petitioner's child;

- (E) Persons whose sexual relationship has resulted in a current pregnancy;
- (F) Other persons jointly residing in the same dwelling unit, who are eighteen (18) years of age or older, or who are emancipated;
- (G) Adults or persons who are former spouses, persons who have resided in the same dwelling unit in the past whether as spouses or in any other relationship;
- (H) Persons who are dating or who have dated;
- (I) Persons who are engaged in or who have engaged in a sexual relationship;
- (J) Persons who were formerly related by marriage; and
- (K) Minor children of a person in one of the relationships described in this subsection.

SECTION 3. Tennessee Code Annotated, Section 36-3-604, is amended by deleting the sixth sentence of subsection (a) and substituting instead the following:

It is the intent of the general assembly that any person who seeks an order of protection should be allowed to file a petition for such an order even if such person cannot afford to pay any of the required filing fees, litigation taxes or other costs. If a person asks for an order of protection and such person cannot afford to pay the filing fees, litigation taxes or other costs, the clerk shall file the petition after the person swears or affirms under oath that he or she cannot afford to pay such costs.

It is a Class C misdemeanor for a clerk to knowingly refuse to file a petition for a person seeking an order of protection if such person has sworn or affirmed under oath that such person is in need of such an order but cannot afford to pay the required filing fees, litigation taxes or other associated costs.

SECTION 4. Tennessee Code Annotated, Section 36-3-604(b)(1), is amended by deleting subdivision (2) of the form for the Petition for Orders of Protection in its entirety and substituting instead the following:

2. Petitioner and respondent have a status that satisfies the requirements of this part.

SECTION 5. Tennessee Code Annotated, Section 36-3-604, is further amended by deleting the following language from subsection (b)(3):

1. That respondent, \_\_\_\_\_, is restrained and prohibited from abusing, threatening to abuse, or committing acts of violence upon petitioner;
2. That if respondent violates this order, the respondent may be held in contempt of Court and punished by incarceration in the \_\_\_\_\_ County Jail.
3. That a hearing on this matter will be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, in the \_\_\_\_\_ Court of \_\_\_\_\_ County, Tennessee; and that respondent has a right to secure counsel to represent him or her at the hearing.
4. That, pursuant to Tennessee Code Annotated, § 36-3-609, a copy of this Order be issued to all local law enforcement agencies in \_\_\_\_\_ County.
5. That, pursuant to Tennessee Code Annotated, § 36-3-611, respondent may be arrested by a law enforcement officer without a warrant if that officer has reasonable cause to believe that respondent has violated or is violating this Order;

and substituting instead the following language:

1. That respondent, \_\_\_\_\_, is restrained and prohibited from abusing, threatening to abuse, or committing acts of violence upon petitioner or from coming about the petitioner in the places specified in item 2 below;
2. That the respondent is ordered to refrain from coming about the petitioner in the following places or

locations, \_\_\_\_\_

\_\_\_\_\_;

3. That if respondent violates this order, the respondent may be guilty of a Class A misdemeanor and punished by confinement for up to 11 months and 29 days or pay a fine of up to \$2,500 or both.

4. That a hearing on this matter will be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, in the \_\_\_\_\_ Court of \_\_\_\_\_ County, Tennessee; and that respondent has a right to secure counsel to represent him or her at the hearing.

5. That, pursuant to Tennessee Code Annotated, § 36-3-609, a copy of this Order be issued to all local law enforcement agencies in \_\_\_\_\_ County.

6. That, pursuant to Tennessee Code Annotated, § 36-3-611, respondent may be arrested by a law enforcement officer without a warrant if that officer has reasonable cause to believe that respondent has violated or is violating this Order;

SECTION 6. Tennessee Code Annotated, Section 36-3-604, is further amended by deleting the following language from subsection (b)(4):  
IF YOU WANT TO TELL YOUR SIDE TO THE JUDGE, YOU MUST BE AT THE HEARING ON \_\_\_\_\_, 19\_\_\_\_. IF YOU DO NOT COME TO THE HEARING, THE JUDGE WILL DECIDE BASED ONLY ON YOUR SPOUSE'S TESTIMONY.

and substituting instead the following:  
IF YOU WANT TO TELL YOUR SIDE TO THE JUDGE, YOU MUST BE AT THE HEARING ON \_\_\_\_\_, 19\_\_\_\_. IF YOU DO NOT COME TO THE HEARING, THE JUDGE WILL DECIDE BASED ONLY ON THE PETITIONER'S TESTIMONY.

SECTION 7. Tennessee Code Annotated, Section 36-3-604, is further amended by deleting the following language from subsection (b)(5):

#### ORDER OF PROTECTION

This cause came on to be heard upon petitioner's petition for orders of protection on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, upon notice duly served on the respondent and upon statements made in open Court. From the entire record herein, the Court finds that the petitioner has proved the allegations of abuse by a preponderance of the evidence.

IT IS, THEREFORE, ORDERED that the respondent is enjoined from coming about petitioner for any purpose and specifically from abusing, threatening to abuse petitioner, or committing any acts of violence upon petitioner upon penalty of contempt.

IT IS FURTHER ORDERED AS FOLLOWS:

1. That, if respondent violates this order, the respondent may be held in contempt of Court and punished by incarceration in the \_\_\_\_\_ County Jail.

2. That, pursuant to Tennessee Code Annotated, § 36-3-609, a copy of this Order be issued to all local law enforcement agencies in \_\_\_\_\_ County.

3. That, pursuant to Tennessee Code Annotated, § 36-3-611, respondent may be arrested by a law enforcement officer without a warrant if that officer has reasonable cause to believe that respondent has violated or is violating this Order.

and substituting instead the following:

#### ORDER OF PROTECTION

This cause came on to be heard upon petitioner's petition for orders of protection on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, upon notice duly served on the respondent and upon statements made in open Court. From the entire record herein, the Court finds that the petitioner has proved the allegations of abuse by a preponderance of the evidence.

IT IS, THEREFORE, ORDERED that the respondent leave in Peace.

IT IS FURTHER ORDERED AS FOLLOWS:

1. That, if respondent is found guilty beyond a reasonable doubt of violating this order, the respondent has committed a Class A misdemeanor punishable by 11 months and 29 days in jail or a \$2,500 fine or both.

That violations of the parts of this order dealing with custody, child support and maintenance of the petitioner may constitute contempt of court and be punished by incarceration in the county jail.

2. That, pursuant to Tennessee Code Annotated, § 36-3-609, a copy of this Order be issued to all local law enforcement agencies in \_\_\_\_\_ County.

3. That, pursuant to Tennessee Code Annotated, § 36-3-611, respondent may be arrested by a law enforcement officer without a warrant if that officer has reasonable cause to believe that respondent has violated or is violating this Order.

SECTION 8. Tennessee Code Annotated, Section 36-3-606, is amended by deleting subsection (a)(1) and substituting instead the following:

(1) Directing the respondent to refrain from coming about the petitioner in the places or locations specified by the judge in the order and to leave in peace;

SECTION 9. Tennessee Code Annotated, Section 36-3-610, is amended by deleting the section in its entirety and substituting instead the following:

Violation of an order of protection is a Class A misdemeanor; provided, however, a violation of such an order with regard to its child support, custody or spousal maintenance provisions may constitute civil or criminal contempt punishable as contempt is punished in other proceedings.

SECTION 10. Tennessee Code Annotated, Section 36-3-612, is amended by deleting the section in its entirety and substituting instead the following:

The arrest, processing and prosecution for the violation of an order of protection shall be accomplished in the same manner as for any other misdemeanor.

SECTION 11. Tennessee Code Annotated, Section 39-14-402, is amended by deleting subsection (a)(3) and substituting instead the following:

(3) Enters a building and commits or attempts to commit a felony, assault or theft;

SECTION 12. Tennessee Code Annotated, Section 39-17-315, is amended by deleting subsection (b) and substituting instead the following:

(b) (1) Stalking is a Class A misdemeanor.

(2) A second or subsequent violation of subsection (a) occurring within seven (7) years of a prior stalking conviction is a Class B felony.

(3) Any person who violates subsection (a) after having been enjoined or restrained by order, diversion, or probation agreement of a court of competent jurisdiction in effect prohibiting the behavior described in subsection (a) against the same party commits a Class A felony.

SECTION 13. Tennessee Code Annotated, Section 40-7-103, is amended by deleting subsection (a)(7)(A) and (a)(7)(B) and substituting instead the following:

(7) (A) Notwithstanding any other provision of law to the contrary, when a law enforcement officer responds to a domestic violence call and finds the victim and alleged assailant are both present, such officer may arrest the alleged assailant without a warrant if:

(i) Such officer actually observes the commission of an assault and battery or more serious offense against the victim; or

(ii) Such officer has probable cause to believe that an assault and battery or more serious offense against the victim has been committed though not in the officer's presence;

(B) When a law enforcement officer responds to a domestic violence call and the alleged assailant is no longer present, such officer shall:

(i) Offer to transport the victim to the location where arrest warrants are issued in that city or county and assist the victim in obtaining an arrest warrant against the alleged assailant;

(ii) Offer to assist the victim in removing essential personal effects; and

(iii) Offer to transport the victim to a place of safety such as any shelter or other similar service available in the community or the residence of a friend or relative;

SECTION 13. Tennessee Code Annotated, Title 40, Chapter 7, Part 1, is amended by adding the following as a new section:

Section\_\_\_\_. (a) When a law enforcement officer responding to a domestic violence call receives complaints of domestic violence from two (2) or more persons, such officer shall evaluate each complaint separately. If such officer has authority to arrest without a warrant pursuant to Tennessee Code Annotated, Section 40-7-103(a)(7), and has probable cause to believe that one (1) person was the primary physical aggressor, the officer need not arrest the other party who is alleged to have committed domestic violence. In determining whether a person is the “primary aggressor”, the law enforcement officer shall consider the following:

(1) Prior complaints of domestic or family violence and their resolution in the courts;

(2) The relative severity of the injuries inflicted on each person;

(3) The likelihood of future injury to each person; and

(4) Whether one of the persons acted in self defense.

(b) When investigating such claims of domestic or family violence the law enforcement officer shall not:

(1) Threaten, suggest or otherwise indicate the possible arrest of all parties to discourage the request of any party for intervention by law enforcement;



(2) Base a decision to arrest or not to arrest on:

(A) the specific consent or request of the victim; or

(B) the officer's perception of the willingness of a victim or witness to the domestic violence to testify or otherwise participate in a judicial proceeding.

(c) A law enforcement officer who does not make an arrest after investigating a complaint of domestic violence or who arrests two (2) or more persons for a crime involving domestic violence must submit a written report with the arrest warrants stating the grounds for not arresting anyone or for arresting both parties.

(d) Incident to an arrest for a crime involving domestic violence, a law enforcement officer:

(1) Shall seize all weapons that are alleged to have been involved or that were threatened to be used in the commission of the offense.

(2) May seize a weapon that is in the plain view of the officer or is discovered pursuant to a consensual search, if necessary for the protection of the officer or other persons.

SECTION 14. Tennessee Code Annotated, Section 40-35-303, is amended by adding the following appropriately lettered new subsections:

( ) In determining whether a person convicted of domestic violence should be granted probation, the court shall consider the safety and protection of the victim of such violence and of any other member of the victim's family or household.

( ) If the court grants probation to a person convicted of domestic violence, it may condition such probation on compliance with one (1) or more orders of the court including, but not limited to:

(1) Enjoining the perpetrator from threatening to commit or committing acts of violence against the victim or other household members.

(2) Prohibiting the perpetrator from harassing, annoying telephoning, contacting or otherwise communicating, either directly or indirectly, with the victim;

(3) Requiring the perpetrator to stay away from the residence, school, place of employment or a specified place frequented regularly by the victim and by any designated family or household member.

(4) Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances; and

(5) Prohibiting the perpetrator from using or possessing a firearm or any other specified weapon and requiring the perpetrator to surrender and forfeit any weapon currently possessed.

SECTION 15. Sections 1--14 of this act shall be known and may be cited as the "Domestic and Family Violence Prevention Act of 1995".

SECTION 16. This act shall take effect July 1, 1995, the public welfare requiring it.